



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 22, 1998

Ms. Bertha Bailey Whatley
Staff Attorney
Fort Worth Independent School District
100 N. University Drive
Fort Worth, Texas 76107

OR98-1711

Dear Ms. Whatley:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 117043.

The Fort Worth Independent School District (the "district") received an open records request from one of the district's teachers for information concerning evaluations of the teacher's performance. You contend that the requested records are excepted from required public disclosure under section 552.101 of the Government Code because they are made confidential by section 21.355 of the Education Code.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information made confidential by other statutes. Section 21.355 of the Education Code provides that "[a]ny document evaluating the performance of a teacher or administrator is confidential." This office recently interpreted this section to apply to any document that evaluates, as that term is commonly understood, the performance of a teacher or administrator. Open Records Decision No. 643 (1996). In that opinion, this office also concluded that a teacher is someone who is required to hold and does hold a certificate or permit required under chapter 21 of the Education Code and is teaching at the time of his or her evaluation. *Id.* at 4.

After a review of the submitted documents, we conclude that some of the documents do not evaluate the teacher's performance; therefore, we have marked the documents that you must release as they are not confidential under section 21.355. The release of the remaining submitted documents is governed by the provisions of the Education Code. We note that with regard to the appraisal of teachers, section 21.352(a) of the Education Code provides:

(a) In appraising teachers, each school district shall use:

(1) the appraisal process and performance criteria developed by the [Commissioner of Education]; or

(2) an appraisal process and performance criteria:

(A) developed by the district- and campus-level committees established under Section 11.251;

(B) containing the items described by Sections 21.351(a)(1) and (2); and

(C) adopted by the board of trustees.

We further note that section 21.352(c) of the Education Code specifically provides that “[e]ach teacher is entitled to receive a written copy of the evaluation on its completion.” It is well established that statutes governing access to a specific subset of information held by a governmental body prevail over the generally applicable Open Records Act. *See, e.g.*, Open Records Decision No. 478 (1987) at 2-3 (Open Records Act does not govern special rights of access granted under other statutes). If the remaining records before us, which we have marked, represent an evaluation of the requestor as contemplated in section 21.352 of the Education Code, the district may not withhold the requested documents from the current requestor pursuant to any of the Open Records Act’s exceptions. Otherwise, the district must withhold the records at issue in accordance with section 21.355.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/ch

Ref.: ID# 117043

Enclosures: Marked documents

cc: Mr. Larry Shaw
Executive Director
United Educators Association
4900 S.E. Loop 820
Fort Worth, Texas 76140
(w/o enclosures)